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B104 (FORM 104) (08/07) EDVA

ADVERSARY PROCEEDING COVER SHEET		ADVERSARY PROCEEDING NUMBER (Court Use Only)			
(Instructions on Reverse)		(court ese emy)			
PLAINTIFFS	DEFEND	ANTS			
ATTORNEYS (Firm Name, Address, and Telephone No.)	ATTORN	NEYS (If Known)			
PARTY (Check One Box Only)		Check One Box Only)			
□ Debtor □ U.S. Trustee/Bankruptcy Admin	☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin				
□ Creditor □ Other	□ Creditor □ Other				
☐ Trustee CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE	□ Trustee				
NATURE (
(Number up to five (5) boxes starting with lead cause of action as 1	, first alternat	ive cause as 2, second alternative cause as 3, etc.)			
FRBP 7001(1) – Recovery of Money/Property		6) – Dischargeability (continued)			
11-Recovery of money/property - §542 turnover of property 12-Recovery of money/property - §547 preference	61-Dischargeability - \$523(a)(5), domestic support				
13-Recovery of money/property - §548 fraudulent transfer	68-Dischargeability - \$523(a)(6), willful and malicious injury 63-Dischargeability - \$523(a)(8), student loan				
14-Recovery of money/property - other	64-Dischargeability - \$523(a)(15), divorce or separation obligation (other than domestic support)				
FRBP 7001(2) – Validity, Priority or Extent of Lien □ 21-Validity, priority or extent of lien or other interest in property	65-Dischargeability - other				
FRBP 7001(3) - Approval of Sale of Property	FRBP 7001(7) – Injunctive Relief 71-Injunctive relief – imposition of stay				
31-Approval of sale of property of estate and of a co-owner - §363(h)	_	72-Injunctive relief – other			
FRBP 7001(4) – Objection/Revocation of Discharge 41-Objection / revocation of discharge - \$727(c),(d),(e)	FRBP 7001(8) Subordination of Claim or Interest 81-Subordination of claim or interest				
EDDD 7004/5) D	□ 61-3u00	difficultion of claim of interest			
FRBP 7001(5) − Revocation of Confirmation 51-Revocation of confirmation		FRBP 7001(9) Declaratory Judgment 91-Declaratory judgment			
FRBP 7001(6) – Dischargeability	FRBP 7001(1	(0) Determination of Removed Action			
☐ 66-Dischargeability - \$523(a)(1),(14),(14A) priority tax claims ☐ 62-Dischargeability - \$523(a)(2), false pretenses, false representation,		rmination of removed claim or cause			
actual fraud	Other	C 15 U.S.C. 9970 4			
67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny	_	. Case – 15 U.S.C. §§78aaa <i>et.seq</i> . • (e.g. other actions that would have been brought in state court			
(continued next column)		related to bankruptcy case)			
☐ Check if this case involves a substantive issue of state law		this is asserted to be a class action under FRCP 23			
☐ Check if a jury trial is demanded in complaint	Demand \$				
Other Relief Sought					

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B104 (FORM 104) (08/07), Page 2

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES						
NAME OF DEBTOR		BANKRUPTCY CASE NO.				
DISTRICT IN WHICH CASE IS PENDING	TRICT IN WHICH CASE IS PENDING		NAME OF JUDGE			
RELATED ADVERSARY PROCEEDING (IF ANY)						
PLAINTIFF	DEFENDANT		ADVERSARY PROCEEDING NO.			
DISTRICT IN WHICH ADVERSARY IS PENDIN	\G	DIVISION OFFICE	NAME OF JUDGE			
SIGNATURE OF ATTORNEY (OR PLAINTIFF)						
DATE		PRINT NAME OF ATTORNE	Y (OR PLAINTIFF)			

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, *unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

*Per LBR 7003-1, in the EDVA, a properly completed Adversary Proceeding Cover Sheet is required.

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Counsel to the Liquidating Trustee

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF VIRGINIA RICHMOND DIVISION

In re:) Case No. 08-35653 (KRH)
CIRCUIT CITY STORES, INC., et al.,) Chapter 11
Debtors.) (Jointly Administered))
ALFRED H. SIEGEL, AS TRUSTEE OF THE CIRCUIT CITY STORES, INC. LIQUIDATING TRUST))) Adv. Pro. No. 10)
Plaintiff,))
v.))
PROVIEW TECHNOLOGY INC.; PROVIEW TECHNOLOGY (SHENZHEN) CO. LTD.; THE CIT GROUP/COMMERCIAL SERVICES, INC,))))
Proview Defendants.	<i>)</i>)

THE LIQUIDATING TRUSTEE'S COMPLAINT TO AVOID AND RECOVER PREFERENTIAL TRANSFERS AND OTHER AMOUNTS OWING TO THE ESTATE

Alfred H. Siegel, the duly appointed trustee of the Circuit City Stores, Inc.

Liquidating Trust (the "Trustee"), pursuant to the Second Amended Joint Plan of Liquidation of

Circuit City Stores, Inc. and its Affiliated Debtors and Debtors in Possession and its Official

Committee of Creditors Holding General Unsecured Claims (the "Plan") for his complaint (the
"Complaint") against Proview Technology Inc. and Proview Technology (Schenzhen) Co. Ltd.

(collectively, "Proview Defendants") and The CIT Group/Commercial Services, Inc. ("CIT

Defendant")(the "Proview Defendants and CIT Defendant are collectively referred to as the
"Defendants"), alleges as follows:

NATURE OF THE ACTION

1. The Trustee brings this action against Defendants to recover amounts due and owing from Defendants to Circuit City arising from the relationship between the parties. In addition to contractual claims, the Trustee seeks recovery for unjust enrichment and to avoid and recover certain preferential transfers that occurred during the 90-day period prior to the commencement of Circuit City's bankruptcy proceedings, as well as turnover of property of the bankruptcy estates.

THE PARTIES

2. The Trustee ("Trustee" or "Plaintiff") is the duly appointed trustee of the Circuit City Stores, Inc. Liquidating Trust (the "Trust"). Pursuant to Articles II and III of the Trust, the Trustee has the sole authority to pursue claims transferred to the Trust by the Debtors through the Plan, and to litigate objections to claims asserted against the Debtors' estates.

- 3. Prior to the Effective Date of the Plan, Circuit City Stores, Inc. and its affiliated debtors in possession (collectively "Circuit City" or the "Debtors") were corporations that maintained their respective principal places of business in the locations set forth below, and were the debtors in the above-captioned chapter 11 bankruptcy cases.
- 4. Upon information and belief, defendant Proview Technology Inc. is a corporation organized under the laws of the State of California with its principal place of business in Pamona, California.
- 5. Upon information and belief, defendant Proview Technology (Schenzhen) Co. Ltd. is a Chinese corporation with offices at Block #21, 23, Shatoukok Free Trade Zone, Shenzhen, China 518081.
- Proview Defendants The CIT Group/Commercial Services is a corporation 6. organized in accordance with the laws of New York and with its principle place of business in New York, New York.

JURISDICTION AND VENUE

- 7. This Court has jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334.
 - 8. This is a core proceeding under 28 U.S.C. § 157(b).

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc.(6796), Sky Venture Corp. (0311), PRAHS, Inc.(n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address was 9950 Mayland Drive, Richmond, Virginia 23233 and currently is 4951 Lake Brook Drive, Glen Allen, VA 23060.

- 9. Venue of these chapter 11 cases and this adversary proceeding in this district and before this Court is proper under 28 U.S.C. §§ 1408 and 1409.
- 10. The statutory and legal predicates for the relief requested by the Complaint are sections 105, 502, 503, 541, 542, 547, 550, and 558 of title 11, United States Code (the "Bankruptcy Code"), Bankruptcy Rules 3007 and 7001, and Local Bankruptcy Rule 3007-1.

PERTINENT FACTS

A. General Case Background

- 11. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code, and until the effective date of the Plan, continued to operate as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.
- 12. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee").
- 13. On January 16, 2009, the Court authorized the Debtors to, among other things, conduct going out of business sales at all of the Debtors' retail locations (the "Stores") pursuant to an agency agreement (the "Agency Agreement") between the Debtors and a joint venture, as agent (the "Agent"). On January 17, 2009, the Agent commenced going out of business sales at the Stores pursuant to the Agency Agreement. As of March 8, 2009, the going out of business sales at the Debtors' stores were completed.
- 14. On August 9, 2010, the Debtors and the Creditors' Committee filed the Plan, which provides for the liquidation of the Debtors' assets and distribution of the proceeds thereof under chapter 11 of the Bankruptcy Code.

- 15. On September 10, 2010, the United States Bankruptcy Court, Eastern District of Virginia, signed an Order confirming the Plan.
 - 16. The Plan became effective on November 1, 2010 (the "Effective Date").

B. The Business Relationship Between Circuit City And Proview Defendants

- 17. Prior to the commencement of these bankruptcy cases, the Debtors were a leading specialty retailer of consumer electronics and operated large nationwide electronics stores that sold, among other things, televisions, home theatre systems, computers, camcorders, furniture, software, imaging and telecommunications products, and other audio and video electronics.
- 18. On February 27, 2007, Circuit City and Proview Defendants entered into an agreement pursuant to which Proview Defendants sold goods to Circuit City (the "Agreement").
- 19. During the course of the parties' relationship, the parties engaged in numerous transactions pursuant to the Agreement, that are reflected in invoices, communications and other documents (collectively, the "Proview Defendants' Agreements").
- 20. Circuit City and Proview Defendants conducted business with one another up to and through the Petition Date, and thereafter, under the Proview Defendants' Agreements.
- 21. During the ordinary course of the Debtors' business, the Debtors maintained books and records of their transactions with Proview Defendants (the "Books and Records").

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C. Amounts Owed To Circuit City By Proview Defendants

22. As of the date hereof, on account of the pre- and post-petition business conducted between Proview Defendants and Circuit City pursuant to the Proview Defendants' Agreements or otherwise, Proview Defendants is indebted to Circuit City on account of the following unpaid obligations (the "Unpaid Obligations") in at least the following amounts:

\$1,248,711.91
\$994,195.33
\$254,516.58

- 23. The Unpaid Obligations are due, owing, and payable by Proview Defendants to Circuit City.
- 24. Circuit City has made demand for the Unpaid Obligations, but Proview Defendants has not complied, and has not paid any portion of the Unpaid Obligations.

D. <u>Transfers To Defendants Made Within 90 Days Prior To The Petition Date</u>

- 25. During the 90-day period prior to the commencement of Circuit City's bankruptcy cases (the "Preference Period"), Circuit City transferred property to or for the benefit of the Defendants, including, on information and belief, the CIT Defendant, in an amount not less than \$7,016,776.12. A list identifying each and every transfer during the Preference Period is attached hereto as Exhibit A and incorporated herein by reference (collectively, the "Preferential Transfers").
- 26. Plaintiff acknowledges that some of the Preferential Transfers might be subject to defenses under Bankruptcy Code section 547(c), for which the Defendants bear the burden of proof under Section 547(g). Plaintiff will work with the Defendants to exchange

applicable information in an effort to resolve any and all factual issues with respect to potential defenses.

COUNT I

AVOIDANCE OF PREFERENTIAL TRANSFERS PURSUANT TO 11 U.S.C. § 547(b)

- 27. The Trustee repeats and realleges each of the allegations set forth above as if fully set forth herein.
- 28. During the Preference Period, Defendants was a creditor of one or more of the Debtors.
- 29. Each Preferential Transfer identified on Exhibit A hereto was made to or for the benefit of Defendants.
- 30. Each Preferential Transfer was made for or on account of an antecedent debt or debts owed by one or more of the Debtors before such Preferential Transfers were made.
 - 31. Each Preferential Transfer was made during the Preference Period.
 - 32. Each Preferential Transfer was made while the Debtors were insolvent.
- 33. Each Preferential Transfer enabled Defendants to receive more than Defendants would have received if (i) the Debtors' chapter 11 cases were instead cases under chapter 7 of the Bankruptcy Code; (ii) the transfers and/or payments had not been made; and (iii) Defendants received payment on account of the debt paid by the Preferential Transfers to the extent provided by the Bankruptcy Code.
- 34. Each Preferential Transfer constitutes an avoidable preference pursuant to Bankruptcy Code section 547(b).

COUNT II

RECOVERY OF PREFERENTIAL TRANSFERS PURSUANT TO 11 U.S.C. § 550

- 35. The Trustee repeats and realleges each of the allegations set forth above as if fully set forth herein
- 36. Defendants were either (i) the initial transferee of the Preferential Transfers, (ii) the entity for whose benefit the Preferential Transfers were made, or (iii) an immediate or mediate transferee of the Preferential Transfers.
- 37. Each Preferential Transfer that is avoided under Section 547(b) is recoverable pursuant to Bankruptcy Code section 550.
- 38. Subject to potential defenses, the Trustee is entitled to recover the value of the Preferential Transfers pursuant to Bankruptcy Code section 550(a).

COUNT III

BREACH OF CONTRACT

- 39. The Trustee repeats and realleges each of the allegations set forth above as if fully set forth herein.
- 40. Pursuant to the Proview Defendants' Agreements, Proview Defendants is obligated to pay to the Debtors the Unpaid Obligations.
- 41. The Proview Defendants' Agreements are valid and enforceable agreements against Proview Defendants.
- 42. The Debtors performed their obligations under the Proview Defendants' Agreements with respect to the Unpaid Obligations.

- 43. Proview Defendants' failure to compensate the Debtors for the Unpaid Obligations in an amount not less than \$1,248,711.91 constitutes a material breach of Proview Defendants' obligations under the Proview Defendants' Agreements.
- 44. As a direct and proximate result of Proview Defendants' breaches, the Debtors incurred damages in an amount not less than \$1,248,711.91.
- 45. Accordingly, the Trustee is entitled to a judgment against Proview Defendants in an amount not less than \$1,248,711.91.

COUNT IV

UNJUST ENRICHMENT/QUASI CONTRACT

- 46. The Trustee repeats and realleges each of the allegations set forth above as if fully set forth herein.
- 47. In the alternative to Count III, but without waiving any allegation with respect thereto, the Trustee makes the following additional allegations in support of Count IV.
- 48. The Debtors conferred a benefit upon Proview Defendants pursuant to the Proview Defendants Agreements.
- 49. Proview Defendants knowingly accepted the benefit conferred by the Debtors.
- 50. The Debtors reasonably expected to be compensated by Proview

 Defendants in an amount not less than \$1,248,711.91 on account of the benefit conferred upon

 Proview Defendants.
- 51. Proview Defendants' receipt of benefit without just compensation to the Debtors has unjustly enriched Proview Defendants in an amount not less than \$1,248,711.91.

- 52. The Trustee has no adequate remedy at law to recover the Unpaid Obligations.
- 53. Accordingly, as a result of Proview Defendants' unjust enrichment at the Debtors' expense, the Trustee is entitled to restitution from the Proview Defendants in an amount not less than \$1,248,711.91.

COUNT V

TURNOVER OF PROPERTY PURSUANT TO 11 U.S.C. § 542

- 54. The Trustee repeats and realleges each of the allegations set forth above as if fully set forth herein.
- 55. In the alternative to Counts III and IV, but without waiving any allegation with respect thereto, the Trustee makes the following additional allegations in support of Count V.
- 56. Proview Defendants is in possession, custody, and control of the Unpaid Obligations in an amount not less than \$1,248,711.91.
 - 57. Proview Defendants is not a custodian for the Unpaid Obligations.
- 58. The Unpaid Obligations constitute valid and existing debts, due and owing by Proview Defendants to the Debtors.
- 59. The Unpaid Obligations are property of the Debtors' estates under section 541 of the Bankruptcy Code and constitute debts that are matured, payable on demand, or payable on order.
- 60. Despite being requested to do so, Proview Defendants has not turned over or paid to Circuit City the Unpaid Obligations.

61. Accordingly, pursuant to Bankruptcy Code section 542, Proview

Defendants should be compelled to immediately turn over and deliver to the Trustee the Unpaid

Obligations in an amount not less than \$1,248,711.91.

PRAYER FOR RELIEF

WHEREFORE, the Trustee respectfully requests and prays that the Court:

- i. Pursuant to Counts I and II, enter judgment against Defendants under 11 U.S.C. §§ 547 and 550 and allow the Trustee to avoid and recover the Preferential Transfers in an amount not less than \$7,016,776.12; and
- ii. Pursuant to Count III, enter judgment against Proview Defendants for breach of contract and award the Trustee damages in an amount not less than \$1,248,711.91; and
- iii. In the alternative to Count III, pursuant to Count IV, enter judgment against Proview Defendants for unjust enrichment and award the Trustee restitution damages on account of Proview Defendants' unjust enrichment in an amount not less than \$1,248,711.91; and
- iv. In the alternative to Counts III and IV, pursuant to Count V, order Proview Defendants to immediately turn over and deliver to the Trustee the Unpaid Obligations in an amount not less than \$1,248,711.91; and
- v. Award the Trustee prejudgment interest at the legally allowed applicable rate;
 - vi. Award the Trustee costs, and expenses of suit herein; and
- vii. Grant the Trustee such other and further relief the Court deems just and appropriate.

Dated: Richmond, Virginia November 10, 2010 TAVENNER & BERAN, PLC

/s/ Paula S. Beran____

Lynn L. Tavenner (VA Bar No. 30083) Paula S. Beran (VA Bar No. 34679) 20 North Eighth Street, 2nd Floor Richmond, Virginia 23219 (804) 783-8300

- and -

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Counsel to the Liquidating Trustee

EXHIBIT A

(Preferential Transfers)

Vendor Name	Check Clear Date	Check Number		Pa	aid Amount
BB&T	8/12/2008		638	\$1	,612,394.07
BB&T	8/18/2008		1033660	\$1	,166,484.44
BB&T	8/20/2008		639	\$1	,612,394.07
BB&T	8/28/2008		640	\$1	,432,428.00
BB&T	9/5/2008		641	\$	294,840.00
BB&T	9/18/2008		644	\$	252,000.00
BB&T	10/3/2008		651	\$	225,360.00
BB&T	10/6/2008		654	\$	126,000.00
BB&T	10/17/2008		1036841	\$	35.54
BB&T	10/30/2008		665	\$	294,840.00

Total Payment Amount \$7,016,776.12